Supreme Court, U.S.
FILED

06-716 SEP - 7 2006

OFFICE OF THE CLERK

NO. _____

In the Supreme Court of the United States

GERSH KORSINSKY,

Petitioner,

vs.

U.S. ENVIRONMENTAL PROTECTION AGENCY,

Respondent(s).

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

GERSH KORSINSKY
1236 – 49th Street, Apartment 4B
Brooklyn, New York 11219
(713) 435-1107

Petitioner Pro Se

QUESTIONS PRESENTED

If Very Limited Judicial Power extends to Individual Controversies Cases to which the United States shall be a Party, even not concern public health and life high risk, such high risk diseases from consume contaminated water, air and soil agriculture products, and cut off water supply, and nature catastrophic destruction from global warming, which can be avoidable, and even opportunity of the court's review of the merits of the standing, can to satisfy the requirements of the Article I, Section 8, [1],[18], Article II, Section 2, [3], Section 1 [8]; the Article III, Section [1] [2], Preamble, First Amendment

If Very Limited Judicial Power extends to only about 1% of Supreme Court Review of the cases that filed each Term, which take away the judicial power to Justice all legislative and the executive activities, which created from political interests which vulnerable to ignoring of the US Constitutional requirements, can to satisfy of the requirements of the Article III, Section 2, [1], [2], Preamble; of the Article II, Section 1,[8], Section 3, First Amendment.

If courts obligate review of the US Government obligation to promote of new Inventions that make avoidable high risk to health and life from consume water and air, or government has the initial burden to presenting evidence or reasons why would not can be promoted to satisfy requirements of the Article 1, Section 8 [8],[1],[18]; Art. II [8], Sec.3

If facts, such plaintiff asserts that he is " more vulnerable to diseases —causing consuming contaminated water, air and soil agriculture products than general population because allegedly is suffering from sinuses related diseases pathology and chronic during its entire life (affects similar to allergic nature, and 70 years old, he developed a mental sickness from more from 25 years learning of the danger of contaminated water and air consuming", can be

courts hears argument and reviewed to confer standing purposes, can satisfy requirements of the Art. I, Sec.8[1],[18] First Amendment.

If courts have jurisdictions to order to comply of real time water testing and exhaustless air pollutant, which is not a discretional nature, or government has that initial burden to presenting evidence or reasons why would not can be complied for judicial review can satisfy requirements of the Art. I, Sec. 8[1],[18], Art. III, Sec. 2[1],[2]; Amendment 1.

If facts health and life affection from the contamination water, air and agriculture consume was and will be, which government recognized, but was not detectable or was not preventive warning at real time, can be to plaintiff to confer standing to satisfy of Art. I, Sec. 8[1],[18]; Art. II, Sec. 2,[1],[2]; First amendment.

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

U.S. ENVIRONMENTAL PROTECTION AGENCY,

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION,

NEW YORK STATE DEPARTMENT OF HEALTH,

U.S. FOOD AND DRUG ADMINISTRATION,

U.S. DEPARTMENT OF HOMELAND SECURITY,

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION.

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinions of the United States Court of Appeals appear at pages A-1 and A-4 of the .ppendix to the petition and are unpublished.

The opinions of the United States district court appear at pages A-7 and A-12 of the appendix to the petition and are unpublished.

JURISDICTION

The dates on which the United States Court of Appeals decided my cases were: August 04, 2006 (05-5577) and August 10, 2006 (05-6802).

No petition for rehearing was timely filed in my cases.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

"Preamble: We the People of the United States... establish Justice, insure domestic Tranquility, provide for common defence, promote the General Welfare..."

Article I, Section 8, [1]: "The Congress Shall have Power...provide for the common defence and general Welfare of the United States..."

[8]: "To promote the Progress of Science and useful Arts, ..."

[18]: "To make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers vested by this Constitution in the Government of the United States, or In any Department or Officer thereof."

Article II, Section 1,[8]: " ...and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 3: "...he shall take care that the laws be faithfully executed, and shall Commission all the Officers of the United States. "

Article III, Section [2] [1]: " The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the laws of the United States, and Treaties made, or shall be made, under their Authority; – to all Cases affecting Ambassadors, other public Ministers and Consuls; – to all Cases of admiralty and maritime Jurisdiction; – to Controversies to which The United States shall be a Party; – to ...".

[2] "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a state shall be a party, the supreme Court shall have original Jurisdiction, in all other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and fact, with such Exceptions, and under such Regulations as the Congress shall make."

Amendment I: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

STATEMENT OF THE CASE

The judgments and decisions of the US District court for the Southern District of New York (Honorable Denny Chin, Judge) and (Honorable Naomi Reice Buchwald, Judge) Affirmed by United States Court of Appeals for the Second Circuit of New York.

The two judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, as a single petition.

This centers on a narrow in context of a category of

actually and progressive treat of contaminating and poisoning from not tested water supplying, and cut off of the only Water Supply System from not stocking water during supplying, and catastrophic increasing contaminating air and soil, which causes serious risk for difference category health status individuals for over 10 million people in short terms, and nature global destroying from "Global Warming" in long terms. Which is avoidable and can be solved through two new inventions, published on 31 March 2005 by US Patent and Trademark Office Inventions.

The importance proper government acting concerns and recognizes are supported by the Clean Air Act, Clean Water Act, National Primary Drinking Water Regulations, 40 CFR of EPA, NYS Sanitary Code (10NY CRR), 21 USC 602, 21 USC Federal Food, Drug, and Cosmetics Act ("FFDCA"), Federal Meat Inspection, etc., and other related Common Laws and regulations, and Federal Employers' Liability Act; by Michael Baur, et al. v. Veneman et al., 352 F. 3d 625: 2003 US, etc.

Plaintiffs Standing supported by Michael Baur, et al. v. Veneman et al., 352 F. 3d 625: 2003 US, etc.; and by Cas R. Sunsteen, "Standing Injuriens," 1993 SUP. CT. REV. 37, 58 (1994); and Jerry L. Mashaw, "Rights in Federal Administrative State," 92 Yale L J. 1129, 1168 (1983); and NYC Drinking Water Yearly Report, etc.

Contaminated air, water and agriculture products consuming causes health and life affection from very large difference sources that affects, which are too broad and which cannot be learned or experienced, even for same little judgment, and, therefore, cannot be subjected to administratively discretionary matters.

Air pollutant exhausting preventing and tested (which cannot be monitored substituted) water supplying, and reserving water by cut off water supplying, absolutely cannot be subjected to administratively discretionary matters. Governments and courts actions against smoking and water

pollutant, recognized of the serious and danger of air pollution and water pollution, which is sufficient to confer standing.

Pollution sedimentation causes of air, water and soil contamination by failure perform of legal duties, subjected to human life and health high risk, which sufficient to confer standing.

REASONS FOR GRANTING THE PETITION

The decisions of the lower court is not concerned the high risk for people's life and health from not tested and none stocked water supplying, and not exhaustless air pollutant, which may be are in conflict with the providing of the common Defense and general Welfare of the United States that in conflict with the US Constitution (Art. I, Sec. 8, Cl. 1)

The lower Court decisions not exercise of courts supervisory power for not tasted and not stocked water supplying, and not exhaustless pollutant imposing for general Welfare of the people maybe in conflict with provision (Art. I, Sec. 8, Cl. 1)

The laws that very limits courts supervisory power over governments activities, even high risk for human's life and health, such not tested and not stocked water supplying, and not exhausted pollutant using, even without reasons or evidences are maybe in conflict with First Amendment: "Congress shall make no law...to petition the Government for a redress of grievances"; and Art. II, Sec. 2, Cl. 1 "The judicial Power shall extend to all Cases in Law and Equity, arising under this Constitution."

Because, in the present Cases public state agencies are Parties and concerns public Welfare, the Supreme Court shall have original Jurisdiction, therefore, maybe the Court grants and hears argument in only about 1% of the cases that are filed each Term not applied to satisfy constitutional Art. III, Sec. 2, Cl. 2.

The lower Court's erroneous factual that the present case is distinguished from other such cases by immediately

personal in[illegible] sureness or high risk to human life and health; and plainti[illegible]ore from other people vulnerable to diseases because his age and his chronic pathological abnormality; and because the knowledge of the danger of consuming of contaminated water, air which developed a mental sickness caused him to invent technologies for exhaustless pollutant and tested and stocked water supplying which personalized grievance for sufficient to confer standing.

The lower Court's erroneous factual that the present cases about to promote science related to human health and life in short terms and environmental protection in long terms which the Congress obligation under Art. I, Sec 8: "The Congress Shall Have Power...To promote the progress of Science..."

The lower Court's erroneous factual Plaintiff's clear right that to have defendants impose Exhaustless pollutant using, and Tested and Stocked water supplying as a plainly common defined and courts there exist jurisdiction to compel agencies actions, or must be proved that cannot be allowed to be.

The lower Court's decisions are prevent court's review of the merits of the case which issues concerned Humans health and life which such importance to the public, which take away judicial supervisory power over Government activities which is in conflict with the First Constitutional Amendment.

The US Court of Appeals has decided public important issues, concerned to human's health and life that has not been, but should be settled by this Court, or has decided in a way that conflict with Constitutional First Amendment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

GERSH KORSINSKY
1236 - 49th STREET, APARTMENT 4B
BROOKLYN, NEW YORK 11219
1-713- 435-1107

PETITIONER, PRO SE

Dated: September 22, 2006

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 4th day of August, two thousand and six.

PRESENT: HON. DENNIS JACOBS,
HON. ROSEMARY S. POOLER
Circuit Judges,
HON. EDWARD R. KORMAN*,
District Chief Judge.

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FILED
AUG 04 2006

GERSH KORSINSKY,

Plaintiff-Appellant,

-v.- 05-5577

USA ENVIRONMENTAL PROTECTION AGENCY, NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION, NYS DEPARTMENT OF HEALTH, USA FOOD AND DRUG ADMINISTRATION, NYC DEPARTMENT OF ENVIRONMENTAL PROTECTION,

HOMELAND SECURITY DEPARTMENT,

Defendants-Appellees.

- - - - - - - - - - - - - - - - x

*The Honorable Edward R. Korman, Chief Judge of the United States District Court for the Eastern District of New York, sitting by designation.

APPEARING FOR APPELLANT:

GERSH KORSINSKY, pro se, NY, NY.

APPEARING FOR APPELLEES:

PIERRE G. ARMAND, Assistant United States Attorney (Michael J. Garcia, United States Attorney for the Southern District of New York, on the brief), NY, NY.

Appeal from the United States District Court for the Southern District of New York (Chin, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the district court be **AFFIRMED.**

Gersh Korsinsky ("Korsinsky") appeals pro se from the June 13, 2005 order of the United States District Court for the Southern District of New York (Chin, J.), granting defendants' motions to dismiss. Familiarity is assumed as to the facts, the procedural context, and the specification of appellate issues.

We review de novo a district court's grant of a motion to dismiss pursuant to Fed. R. Civ. P. 12(b) (6), construing the complaint in the light most favorable to the plaintiff and accepting its allegations as true. See Desiano v. Warner-Lambert Co., 326 F.3d 339, 347 (2d Cir. 2003); PaineWebber Inc. v. Bybyk, 81 F.3d 1193, 1197 (2d Cir. 1996). Under this standard, we affirm the dismissal for the ground stated in the

district court's Memorandum Decision.

For the foregoing reasons, the judgment of the district court is **AFFIRMED.**

FOR THE COURT:
ROSEANN B. MACKECHNIE, CLERK

By:

s/
Lucille Carr, Deputy Clerk

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 10th day of August, Two thousand and six.

PRESENT:

HON. BARRINGTON D. PARKER,
HON. RICHARD C. WESLEY,
HON. PETER W. HALL,
Circuit Judges.

FILED
AUG 10 2006

GERSH KORSINSKY,
Plaintiff-Appellant,

-v.-

SUMMARY ORDER
No. 05-6802-cv

U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA), N.Y.S. DEPARTMENT OF ENVIRONMENTAL PROTECTION, N.Y.S. DEPARTMENT OF ENVIRONMENTAL CONSERVATION,
Defendants-Appellees.

For Plaintiff-Appellant:

Gersh Korsinsky, *pro se*, Brooklyn, New York.

For Defendants-Appellees:

Lawrence H. Fogelman, Assistant United States Attorney for the Southern District of New York, New York, NY; Simon Wynn, Assistant Attorney General (Michael Belohlavek, Senior Counsel, Daniel J. Chepaitis, Assistant Solicitor General, *on the brief*), Office of the Attorney General, New York, NY; Elizabeth S. Natrella, Senior Counsel, Appeals Division, The City of New York Law Department, New York, NY.

Appeal from the United States District Court for the Southern District of New York (Naomi Reice Buchwald, *Judge*).

UPON DUE CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the District Court be and it hereby is **AFFIRMED.**

Gersh Korsinsky, *pro se*, appeals from the district court's judgment dismissing his suit for lack of subject matter jurisdiction. We assume the parties' familiarity with the factual and procedural history.

Article III, § 2 of the United States Constitution limits federal courts to deciding only cases or controversies, and, thus, at a minimum, a plaintiff seeking relief in federal court must "allege, and ultimately prove, that he has suffered an injury-in-fact that is fairly traceable to the challenged action of the defendant, and which is likely to be redressed by the requested relief." *Baur v. Veneman*, 352 F.3d 625, 632 (2d Cir. 2003). "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss [it is] presum[ed] that general

allegations embrace those specific facts that are necessary to support the claim." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (internal quotation marks omitted). Nonetheless, the injury must be "actual" or "imminent," rather than "conjectural" or "hypothetical." *Id.* at 560 (internal quotation marks omitted).

Korsinsky's primary claim, that global warming and carbon dioxide emissions may cause him a future injury, is too speculative to establish standing. *See Jaghory v. N.Y. State Dep't of Educ.*, 131 F.3d 326, 330 (2d Cir. 1997) ("The keystone for determining injury in fact is the requirement that it be distinct and palpable....") (internal quotation marks omitted). Korsinsky does not explain exactly what injury may be caused by the appellees' actions, nor does he explain how the appellees' actions have increased any possible risk to his health. Moreover, Korsinsky has failed to sufficiently allege that his injury is likely to be redressed by any relief the district court could grant.

For these reasons, the judgment of the district court is hereby AFFIRMED. The mandate shall issue forthwith.

FOR THE COURT:

Roseann B. MacKechnie, Clerk

By: s/_____
Lucille Carr

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERSH KORSINSKY,
Plaintiff,

-against-

U.S. ENVIRONMENTAL PROTECTION AGENCY et al.,
Defendants.

MEMORANDUM DECISION

05 Civ. 1528 (DC)

APPEARANCES: (See last page)

CHIN, D.J.

Pro se plaintiff Gersh Korsinsky brings this action against federal, state, and city agencies to compel them to take steps to ensure "a safe, reliable, sufficient water supply" and to protect "the health and well-being [of] natural resources held in trust by New York State." (Compl. ¶ 7). Defendants – the United States Environmental Protection Agency, the Food and Drug Administration, the Department of Homeland Security, the New York State Department of Environmental Conservation, the New York State Department of Health, and the New York City Department of Environmental Protection -- move to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted. For the reasons that follow, the motion is granted and the complaint is dismissed in all respects, with prejudice.

STATEMENT OF THE CASE

A. The Facts

The pro se complaint is difficult to decipher. Construed liberally, the complaint alleges the following facts:

Plaintiff resides in Brooklyn. (Id. ¶ 1). Defendants supply to the public water that is contaminated by, inter, alia, contaminants from animals or humans, microbial contaminants, inorganic contaminants, pesticides and herbicides, and radioactive contaminants. The contamination poses a health risk to plaintiff and to "the public." (Id., ¶¶ 2, 3, 5, 7). There are available "practical, feasible and economically viable options," including a "new invention," that would ensure a safe, reliable, sufficient, and secure water supply. (Id. ¶¶ 4, 40-50). Defendants have failed to take advantage of these options, thereby contributing to the public health risk. (Id. p. 10).

B. Prior Proceedings

Plaintiff commenced this action on February 4, 2005. The complaint does not purport to seek money damages, but requests a permanent injunction enjoining each defendant "to eliminate its contribution to the public health risk by requiring it to eliminate the presence of contaminants" in water that pose a health risk. (Id. p. 10).

The state and city defendants moved to dismiss on March 15, 2005. The federal defendants moved to dismiss on April 22, 2005.

DISCUSSION

The motions to dismiss are granted and the complaint is dismissed, for this Court lacks subject matter jurisdiction over this action because plaintiff lacks standing.

The "case or controversy" requirement of Article III of the Constitution "obligates the federal courts to hear only suits in which the plaintiff has alleged some actual or threatened harm to him or herself, as a result of a 'putatively illegal action.'" Leibovitz v. New York City Transit Auth., 252 F.3d 179, 184 (2d Cir. 2001) (quoting Linda R.S. v. Richard D., 410 U.S. 614, 617 (1973)). To meet the constitutional requirement of standing, a plaintiff must allege a sufficient personal stake in the outcome of the controversy "to ensure the presence of 'that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends.'" Lee v. Bd. of Governors of Fed. Reserve Sys., 118 F.3d 905, 910 (2d Cir. 1997) (quoting Baker v. Carr, 369 U.S. 186, 204 (1962)). A plaintiff must allege and prove (1) injury in fact, i.e., injury that is concrete and particularized as well as actual or imminent and not just conjectural or hypothetical, (2) a causal connection between the injury and the defendant's wrongful action, and (3) the likelihood that the requested relief will redress the injury. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).

Here, plaintiff has failed to allege any concrete or particularized injury caused by defendants. Instead, he has alleged only a generalized harm to public health caused by defendants' purported failure to provide safe drinking water. See Warth v. Seldin, 422 U.S. 490, 499 (1975) ("[W]hen the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant the exercise of jurisdiction."). Likewise, plaintiff has failed to allege any causal connection between his alleged injuries and any alleged wrongful conduct by defendants, nor has he alleged that his purported injuries are likely to be redressed by any relief this Court could order. Hence, plaintiff lacks standing to bring this action.

Defendants have raised other meritorious arguments in support of their motions to dismiss. In light of plaintiff's lack of standing, I do not discuss them.

CONCLUSION

Defendants' motions are granted and the complaint is dismissed in its entirety, with prejudice.

SO ORDERED.

Dated: New York, New York
June 13, 2005

s/
DENNY CHIN
United States District Judge

APPEARANCES

For Plaintiff:

GERSH KORSINSKY
Plaintiff, Pro Se
1236 49th Street, Apt. 4B
Brooklyn, New York 11219

For New York State and New York City agency defendants:

ELIOT SPITZER
Attorney General of the State of New York
By: Simon Wynn, Esq.
Assistant Attorney General
Environmental Protection Bureau
120 Broadway
New York, New York 10271

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
By: Tracy Triplett, Esq.
100 Church Street, Room 6-133
New York, New York 10007

For Federal Defendants:

DAVID N. KELLEY
United States Attorney for the
Southern District of New York
By: Allison D. Penn, Esq.
Assistant United States Attorney
86 Chambers Street
New York, New York 10007

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERSH KORSINSKY,
Plaintiff,

-against - **MEMORANDUM AND ORDER**
05 Civ. 859 (NRB)

U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA); N.Y.S. DEPARTMENT OF ENVIRONMENTAL CONSERVATION; N.Y.C. DEPARTMENT OF ENVIRONMENTAL PROTECTION,
Defendants.

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Pro se plaintiff Gersh Korsinsky, a New York resident, has brought this action against the United States Environmental Protection Agency ("EPA"), the New York State Department of Environmental Conservation ("NYSDEC") and the New York City Department of Environmental Protection ("NYCDEP") (collectively, "defendants"), alleging "public nuisance" and seeking injunctive relief. Defendants now move to dismiss all of plaintiff's claims. For the reasons set forth herein, defendants' motions to dismiss are granted.

BACKGROUND[1]

On January 25, 2005, plaintiff filed his complaint in this action, seeking relief under the federal common law of

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[1] The following facts are drawn from plaintiff's complaint and, as is appropriate on a motion to dismiss under Fed. R. Civ. P. 12 (b) (6), are assumed herein to be true.

public nuisance, or alternatively under state law of public nuisance, for the phenomenon of global warming.[2] Plaintiff alleges that defendants have contributed to global warming both by annually emitting "approximately 6,500 million tons of carbon dioxide" and by failing to implement "practical, feasible and economically viable options for eliminate [sic] carbon dioxide emissions." Compl. ¶¶ 2, 5. The only such option identified in the complaint is plaintiff's own invention, for which he apparently has sought a patent, and which he asserts will "eliminate carbon dioxide emissions without significantly increasing the cost of process activities." Id. at 5.

Plaintiff seeks an order holding defendants jointly and severally liable for their contributions to global warming. He also requests an order enjoining each defendant from contributing further to global warming by eliminating its emissions of carbon dioxide. Finally, plaintiff appears to request an order requiring defendants to implement his invention. Defendants NYSDEC and NYSDEP (collectively, "New York defendants") moved to dismiss the complaint on March 16, 2005, after which the EPA moved to dismiss the complaint on May 12, 2005. Defendants have moved to dismiss the complaint in its entirety on the grounds of lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted.[3]

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[2] The complaint contains a lengthy recitation of the harms of global warming. Ironically, the vast majority of this discussion appears to have been copied verbatim from the complaint in a separate case brought by the New York defendants and others against companies that allegedly are among the nation's five largest emitters of carbon dioxide.

[3] The EPA has also moved to dismiss under Fed. R. Civ. P. 8. We do not consider this argument in light of our conclusion that subject matter jurisdiction is lacking in this case.

DISCUSSION

In considering a motion to dismiss for lack of subject matter jurisdiction or for failure to state a claim, the Court must accept as true all material factual allegations in the complaint. Levy ex rel. Immunogen Inc. v. Southbrook Int'l Invs., Ltd., 263 F.3d 10, 14 (2d Cir. 2001); Shipping Fin. Servs. Corp. v. Drakos, 140 F.3d 129, 131 (2d Cir..1998) (citing Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)). In addition, "the complaint of a pro se litigant should be liberally construed in his favor." Salahuddin v. Cuomo, 861 F.2d 40, 42-43 (2d Cir. 1988) (citation omitted). However, "[c]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss." Smith v. Local 819 I.B.T. Pension Plan, 291 F.3d 236, 240 (2d Cir. 2002) (quoting Gebhardt v. Allspect, Inc., 96 F. Supp. 2d 331, 333 (S.D.N.Y. 2000)). A motion to dismiss may be granted only where "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Still v. DeBuono, 101 F3d 888, 891 (2d Cir. 1996) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

Defendants argue that plaintiff's complaint must be dismissed for several reasons. Because we find that subject matter jurisdiction is lacking in this case, we need not consider any of defendants' additional arguments. See Rhulen Agency, Inc. v. Alabama Guar. Ass'n, 896 F.2d 674, 678 (2d Cir. 1990).

I. Standing

The issue of standing is "the threshold question in every federal case, determining the power of the court to entertain the suit." Warth v. Seldin, 422 U.S. 490, 498-99, (1975); see also Elk Grove Unified School Dist. v. Newdow, 542 U.S. 1, 14-15 (2004) ("In every federal case, the party bringing the suit must establish standing to prosecute the

action."). At a minimum, plaintiff must satisfy three elements in order to establish standing: 1) an injury in fact that is (a) concrete and particularized and (b) actual or imminent rather than conjectural or hypothetical; 2) a causal connection between the injury and the alleged conduct; and 3) likelihood that the injury will be redressed by a favorable decision. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992); Heldman v. Sobol, 962 F.2d 148, 154 (2d Cir. 1992). "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice," Lujan v. National Wildlife Federation, 497 U.S. 871, 889 (1990).

After alleging no injury in his complaint, plaintiff alleges for the first time in his memorandum of law that he has been, or will be, injured in two ways.[4] First, plaintiff asserts that he is "more vulnerable to disease-causing environmental pollution that general [sic] population" because he allegedly is "suffering from sinuses related diseases [sic] pathology and chronic during its entire life (affects [sic] similar to allergic nature)." Op. At 3. Second, plaintiff claims that he "developed a mental sickness" learning of the danger of pollution. Id. at 4-5. Neither of these alleged injuries is sufficient to confer standing.

While the Second Circuit has held that enhanced risk may in some circumstances qualify as sufficient injury to confer standing, see Baur v. Veneman, 352 F.3d 625, 634 (2d Cir. 2003), the enhanced risk of illness alleged in this case is

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[4] In light of plaintiff's pro se status, such allegations are appropriately considered. See Burgess v. Goord, 1999 WL 33458, at *1 n.1 (S.D.N.Y. Jan. 26, 1999) ("The policy reasons favoring liberal construction of pro se pleadings warrant the Court's consideration of the allegations contained in plaintiffs' memorandum of law, at least where those allegations are consistent with the allegations in the complaint." (citing Donahue v. United States Dep't of Justice, 751 F.Supp. 45, 49 (S.D.N.Y. 1990))).

insufficient.[5] Plaintiff alleges that over time, global warming will enhance the risk of contaminated drinking water. Plaintiff alleges that he is more vulnerable to environmental pollution generally and also cites a report stating that some people may be more vulnerable to microorganisms in drinking water. Such allegations fall more within the realm of the hypothetical and conjectural than the actual or imminent and therefore are insufficient for purposes of standing. See Defenders of Wildlife, 504 U.S. at 564 n.2 ("Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes--that the injury is certainly impending." (internal quotations omitted)).

Plaintiff's second assertion, that he has developed some form of mental illness from knowledge of the dangers of pollution over the years, is also insufficient to confer standing. If we interpret plaintiff's allegation to mean that he has some continuing apprehension from the dangers of

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[5] We note that this case is distinguishable from Baur because the holding of that case was limited to "the specific context of food and drug safety suits." Baur, 352 F.3d at 634. Regardless of whether such a distinction is meaningful, plaintiff's alleged increase in risk fails to satisfy the analysis under Baur. The court in Baur noted that "the probability of harm which a plaintiff must demonstrate in order to allege a cognizable injury-in-fact logically varies with the severity of the probable harm." Id. at 637. There, the risk at issue was transmission of a "deadly disease with no known cure or treatment." Id. at 637. Therefore, the court concluded that even a "moderate increase" in the risk of transmitting such a disease would be sufficient to confer standing. Id. at 637. Here, by contrast, plaintiff alleges nothing more than an increase in risk over a long period of time of aggravating a chronic condition similar to allergies.

pollution, then it is clearly a generalized grievance, which is insufficient to confer standing. See Defenders of Wildlife, 504 U.S. at 575. If plaintiff's allegation were interpreted to mean that he actually has developed some form of mental illness from the knowledge of the danger, it nonetheless would not confer standing because the requested relief would not redress the alleged injury. See Baur, 352 F.3d at 632 ("To establish Article III standing, a plaintiff must therefore allege, and ultimately prove, that he has suffered an injury-in-fact that is fairly traceable to the challenged action of the defendant, and which is likely to be redressed by the requested relief." (citing Bennett v. Spear, 520 U.S. 154, 162, (1997))). The requested relief in this case -- that defendants be held liable for contributions to global warming, enjoined from contributing further and required to use plaintiff's invention -- simply would not redress plaintiff's alleged mental injury stemming from knowledge of the general dangers of pollution.

Conclusion

For the reasons set forth above, defendants' motions to dismiss are granted in their entirety, and all claims against defendants are dismissed.

SO ORDERED.

Dated: New York, New York
September 28, 2005

s/
NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Copies of the foregoing Memorandum and Order have been mailed on this date to the following:

Plaintiff

Gersh Korsinsky
1236 49th Street, Apt. 4B

Brooklyn, NY 11219

Counsel for Defendant United States Environmental Protection Agency

Lawrence H. Fogelman, Esq.
Assistant United States Attorney
Office of the United States Attorney
Southern District of New York
86 Chambers Street
New York, NY 10007

Counsel for Defendant New York State Department of Environmental Conservation

Simon Wynn, Esq.
Assistant Attorney General
State of New York
120 Broadway
New York, NY 10271

Counsel for Defendant New York City Department of Environmental Protection

Michael Burger, Esq.
Assistant Corporation Counsel
City of New York
Law Department
100 Church Street
New York, NY 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERSH KORSINSKY,
Plaintiff.

05 CIVIL 0859 (NRB)

JUDGMENT

-against-

U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA); et al.,
Defendants.

Defendants having moved to dismiss, and the matter having come before the Honorable Naomi Reice Buchwald, United States District Judge, and the Court, on September 28, 2005, having rendered its Memorandum and Order granting defendants' motions to dismiss in their entirety and dismissing all claims against defendants, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Memorandum and Order dated September 28, 2005, defendants' motions to dismiss are granted and all claims against defendants are dismissed.

Dated: New York, New York
September 30, 2005

J. MICHAEL McMAHON
Clerk of Court

By: s/_____
Deputy Clerk